verdict for the plaintiff, retrial was ordered solely for error in the instructions to the jury as to the measure of damages. *Held*, that a new trial upon all the issues, resulting in a verdict for the defendant, is not error. *Cerny* v. *Paxton and Gallagher Co.*, 119 N. W. 14 (Neb.).

A new trial as a remedy for prejudicial error is of comparatively modern development in the common law. See *Bright* v. *Eynon*, 1 Burr. 390; 3 Bl. Comm. 388, 390. Retrial of all the issues has never been a matter of right, the court having discretion to confine it to particular issues. See *Hutchinson* v. *Piper*, 4 Taunt. 555. A new trial is but a means to an end, the correction of error. Hence, when error affects but one issue, which is readily separable and which can be examined without considering the general merits of the case, the new trial should be limited to that issue. *Benton* v. *Collins*, 125 N. C. 83. But see *Edwards* v. *Lewis*, 18 Ala. 494. This is true when issues have been separately submitted to the jury. *Mitchell* v. *Mitchell*, 122 N. C. 332. The issue upon a single plea may be retried; or, merely the question of damages. *Third Natl. Bank* v. *Owen*, 101 Mo. 558, 585; *Boyd* v. *Brown*, 17 Pick. (Mass.) 453, 461. The opposite rule, taken by the principal case, clogs the courts with useless litigation, subjects the state and the parties to unnecessary expense, and deprives the plaintiff of ground legally won. *Lisbon* v. *Lyman*, 49 N. H. 553. As the statute in question did not forbid partial retrials, the common law rule should have prevailed, and such has been the holding in other jurisdictions having similar statutes. *San Diego Co.* v. *Neale*, 78 Cal. 63.

Nuisance — Equitable Relief — Bill against Public Nuisance by Individual. — The defendant, a riparian owner on New York Bay, erected a pier. This was so constructed as to hinder the free access of the public, by way of the sea-shore, to the plaintiff's place of amusement. The plaintiff sought to enjoin this obstruction, showing that it caused him special damage. *Held*, that the injunction should be granted. *Barnes* v. *Midland Railroad Terminal Co.*, 193 N. Y. 378.

This decision overrules that of the lower court discussed in 22 Harv. L. Rev. 137.

Pardon — Validity of Condition Extending beyond Term of Sentence. — A convict was pardoned on condition that if he subsequently committed a felony, the pardon should be void, and he should serve, in addition to the penalty imposed for the subsequent offense, that part of the original sentence which remained unserved at the time of his discharge. After the term of his original sentence had expired, he was convicted of a felony and sentenced to prison. After the expiration of the subsequent sentence, he was detained by reason of the condition in the pardon. *Held*, that the detention is lawful. *Ex parte Kelley*, 99 Pac. 368 (Cal.).

The rule that the power to grant a pardon carries with it the power of granting a conditional pardon is clearly settled. *Arthur* v. *Craig*, 48 Ia. 264. But the condition, of course, must not be illegal. See *State* v. *Smith*, 1 Bailey (S. C.) 283. The general rule is that a convict recommitted after condition broken may be detained after the time fixed for the expiration of his original sentence until he has served the unserved portion of that sentence. *In re McKenna*, 79 Vt. 34. A statute to the same effect has been held constitutional. *Fuller* v. *State*, 122 Ala. 32. On the other hand, it has been laid down that conditions which are to extend beyond the term of the sentence are illegal, as a usurpation of the judicial function by the executive. *In re Prout*, 12 Idaho 494. And it has been held that the duration of the condition will be limited to the period of sentence, unless the contrary is clearly stated. *Huff* v. *Dyer*, 4 Oh. Cir. Ct. R. 595. But of the few decisions on the point the majority support the principal case, and that, it would seem, with sound policy. *State* v. *Barnes*, 32 S. C. 14.

Pledges — Rights of Pledgee of Mortgage who Buys in Title at Foreclosure Sale. — The defendant gave the plaintiff his note, and assigned

to him as collateral security a mortgage on real property. The plaintiff foreclosed under a power of sale in the mortgage, and bought in the title. *Held*, that the plaintiff holds the title as trustee for the defendant, and subject to redemption on the defendant's payment of his debt. *Union Trust Co.* v. *Hasseltine*, 39 Banker and Tradesman 197 (Mass., Sup. Jud. Ct., Jan. 5, 1909).

It is the almost universal rule that a pledgee is precluded from buying at a sale of the property pledged. *Lord* v. *Hartford*, 175 Mass. 320. But he may take any proper action for its preservation. Accordingly, when the thing pledged is a mortgage he may foreclose the mortgage for breach of condition, and such foreclosure is valid against the mortgagee. *Smith* v. *Bunting*, 86 Pa. St. 116. And if the mortgagee, who is also the pledgor, is joined in the foreclosure sale, his right to redeem from the pledgee will likewise be extinguished. *Bloomer* v. *Sturges*, 58 N. Y. 168. On the same principle the pledgee may, with the pledgor's express authority, buy in the property at the mortgage sale with the result that the mortgagee's claim is transferred to the proceeds. *Jennings* v. *Wyzanski*, 188 Mass. 285. But with these qualifications the weight of authority supports the principal case, holding that the only effect of the sale is the substitution of the land for the mortgage in the hands of the assignee, who takes the legal title subject to a trust in favor of the pledgor. *Re Gilbert*, 104 N. Y. 200; *Montague* v. *Boston & Albany R. Co.*, 124 Mass. 242. *Contra*, *Anderson* v. *Messinger*, 146 Fed. 929.

POLICE POWER — NATURE AND EXTENT — COMPENSATION FOR DESTRUCTION OF PRIVATE PROPERTY. — During the war with Spain the commanding general of the United States army caused to be destroyed certain buildings in Cuba belonging to the plaintiff, a Pennsylvania corporation, in order to prevent the spread of yellow fever among the United States troops. The plaintiff brought suit in the Court of Claims for compensation. *Held*, that the plaintiff is not entitled to recover. *Juragua Iron Co.* v. *United States*, 212 U. S. 297.

If in time of peace private property is taken for public purposes without formal proceedings of condemnation, the owner may sue in the Court of Claims for compensation. *United States* v. *Great Falls Mfg. Co.*, 112 U. S. 645. The action is quasi-contractual in its nature, and the Court of Claims has jurisdiction over actions of quasi-contract. *Ingram* v. *United States*, 32 Ct. Cl. 147. But when such property is found in enemy territory it may be seized and confiscated without compensation, even though it belongs to a loyal citizen of the confiscating government. *The Venus*, 8 Cranch (U. S.) 253. The principal case may also be justified on the ground that the property was not *taken* for public use, but was *destroyed*, because detrimental to the public welfare. If private property is taken for public use, it is by an exercise of the power of eminent domain, and just compensation must be given according to the Fifth Amendment. But if private property is destroyed in the due exercise of the police power, no right to compensation arises. *Bowditch* v. *Boston*, 101 U. S. 16. See 3 HARV. L. REV. 189.

PUBLIC OFFICERS — DE FACTO OFFICERS — VALIDITY OF CONTRACTS. — A, while ineligible through the holding of another office, was regularly appointed and publicly recognized as school trustee. He and another trustee who together constituted a majority of the board voted in the regular way to accept a contract of employment with B as a teacher. The succeeding board composed of legally qualified and appointed members employed C for the same position. *Held*, that B is entitled to the position. *Johnson* v. *Sanders*, 115 S. W. 772 (Ky.).

An officer *de facto* is one who has the reputation of being the officer he assumes to be and yet is not an officer in point of law. *King* v. *Corporation of Bedford Level*, 6 East 356; *State* v. *Carroll*, 38 Conn. 449. Such officer must hold under color of right, either through election or appointment, or through long-continued acquiescence by the public in his exercise of the office. *State* v. *Carroll*, *supra*. Thus one ineligible on account of occupancy of an incompatible office has been held a *de facto* officer. *McGregor* v. *Balch*, 14 Vt. 428.